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Testimony of

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Good afternoon my name is Bob Hayes and I am the Commissioner to the International Commission for the Conservation of Atlantic Tunas (ICCAT) for recreational interests. I am also the general counsel for the Coastal Conservation Association (CCA). This Committee has always supported the efforts of recreational and commercial fishermen to conserve tuna, swordfish and billfish through international arrangements like ICCAT. This year, by the passage of H. Con. Res. 268 and through your direct participation in the process, you will be reinforcing those efforts. I know that I, the other Commissioners and the recreational community appreciate and welcome your participation and support.

The international management of highly migratory species is at a crossroads. Nowhere in the world is this more of an issue than in the Atlantic Ocean. I would like to concentrate on the root of the dilemma and what can be done through ICCAT and here at home to advance the conservation of all highly migratory species. First, let me describe what is going on in the Atlantic, which today may be as dynamic as any time in the history of the fishery.

Today, there are three distinct forms of activity going on in the Atlantic: 1) harvest by ICCAT-member nations under specific conservation measures; 2) harvest by non-member countries; and 3) harvest by vessels that are illegal, unregulated, unreported and now undersized. In addition to this mix, add the commercial phenomenon in the Mediterranean of large scale tuna farming. The directed harvests are of swordfish, sharks, yellowfin, bigeye, bluefin and albacore tuna. The bycatch includes seabirds, sea turtles, some sharks and billfish, but primarily blue and white marlin. The harvesting techniques include longlines, purse seines, and hook and line. The fleets include transfer vessels and large catcher processors. The combined fleet consists of thousands of vessels that harvest around 400,000 metric tons of tuna and swordfish. Of that, the United States harvests less than 5 percent. Oddly enough, the most valuable ICCAT fishery for the United States is billfish, about which almost no other ICCAT member seems to care.

The entity trying to manage all this – ICCAT – includes 37 members representing over 60 countries. In the last decade, ICCAT has adopted a series of conservation measures to control the harvest of tunas, swordfish and billfishes. These measures have generally fallen into two categories – harvest limitations and measures to ensure compliance. During the same period, the harvest effort in the Atlantic by member and non-member nations has grown and the production capabilities of individual countries have advanced significantly. If we are to accomplish anything this year regarding white marlin it has to be in the area of market-based compliance.

Compliance

This year like many in the past, the U.S. focus should be on compliance by member and non-member

countries with ICCAT conservation measures. Three ideas have surfaced, all of which have merit. The first idea would control bluefin tuna quotas by allowing the principal importing country to stop imports from a country's vessels once that country has exceeded its quota. For example, Japan may be importing more bluefin from some eastern bluefin countries than the total allowable harvest for those countries. Something is wrong with that. Such a measure will not be easy to implement; however, if Japan is willing to use such a measure we ought to be willing to empower them to use it.

The second enforcement idea that may have some merit is adding tuna farming operations to the positive list. Failure to comply with reporting requirements would be grounds for delisting a farm. (See discussion of positive and negative lists below.)

The third option is most intriguing. It would allow importing nations to prohibit trade in ICCAT species in the event of any violation of any ICCAT conservation measure by any vessel of a contracting or non-contracting party. This would, for the first time, link all ICCAT conservation measures with market access for any ICCAT species. It would affirm what many have thought all along, that ICCAT marlin restrictions cannot be effective unless importing countries can deny access for other valuable ICCAT species.

We need to make progress on all three of these measures this year.

In addition to compliance there are a number of other important issues, some of which are addressed below. The issue of mixing is not included because it is unclear where that road will lead.

Tuna Farming

In recent years a whole new industry has developed in the Mediterranean. Purse seiners now catch small bluefin tuna and put them in pens to grow. They are fed in the pens for up to six months and harvested for sale to Japan. This is a very high quality product and one that can be sold at a distinct market advantage. The size of these operations is enormous and the growth of this sector could outstrip the scientific recommended harvest in the Mediterranean. There are single farming operations that hold more bluefin tuna in their pens than are caught in the entire western Atlantic. In fact, two years ago the U.S. delegation to ICCAT saw a pen operation that contained more tonnage than the entire western bluefin quota. At least eight countries are engaged in tuna farming – Spain, Malta, Italy, Tunisia, Libya, Cyprus, Turkey and Croatia. Three of the countries – Tunisia, Libya and Cyprus – began the activity in 2003.

Recognizing this explosion in bluefin pen rearing, last year's ICCAT meeting approved a requirement for countries to report on the practice. These fish are caught by purse seiners from a variety of nations. The European Union (EU) recently asserted that all transfers from its member vessels were viewed and recorded by observers. Presumably, those harvests were counted against existing ICCAT quotas.

The farms present enormous opportunity for illegal activity. Disregarding fishing quotas, overfishing, laundering and black marketing are words that many are using to describe the possibilities here. Tuna farming[1] in and of itself is not the problem. This may be a legitimate way to maximize the value of the fishery; however, because of its size and the potential for abuse this activity must be highly transparent. What goes in the pens as well as what comes out must be recorded and member nations must comply with the existing quota regime.

The New Fishing Nations

In the early days of the Magnuson-Stevens Act, this nation undertook a fishery development program designed to maximize its resources out to 200 miles. At the time the United States could have been considered a lesser developed fishing nation. Today, the zeal for development of a domestic fishery has been transferred to any number of Atlantic coastal nations. As ICCAT compliance quotas have come on line, nations previously fishing outside the convention have decided to join. Countries joining ICCAT are asking for quotas. Last year, Mexico joined and got a quota for both bluefin and swordfish. Iceland joined and asked for a bluefin quota. Malta and Cyprus, joining this year, will clearly ask for quotas.

These demands, coupled with the demand of existing members for increased quotas, stress the system. ICCAT cannot sustain comprehensive quota and allocation regimes that simply add up the demands of fishing nations and establish that total as the quota, regardless of the science. Last year's eastern bluefin regime was very close to this. The United States argued that the quota should be considerably lower. The EU argued that the quota had to cover all nations fishing for eastern bluefin and that over time it would

equalize because of a reduction in small fish catch. Were there a reduction in small fish catch over the next five years, it would be possible to sustain the present level of harvest. U.S. constituencies, through the use of the Pelly Amendment and Section 301 of the Trade Act of 1974, as amended, are ready to apply more pressure if progress is not made.

Illegal, Unreported and Unregulated Vessels

Last year I appeared before this Committee to discuss the ICCAT challenges in 2002. Then, I told the Committee the single most important thing that could be accomplished at ICCAT was a recommendation providing member countries with the authority to prevent the imports from illegal, unreported and unregulated (IUU) vessels. Two measures were adopted, the so-called "positive list" and "negative list." The National Marine Fisheries Service (NMFS), along with ICCAT and other member nations, is in the process of developing these measures. The measures require that imported product (swordfish and bluefin tuna) be registered with the ICCAT secretariat (positive list) or, conversely, identified on a list as an IUU vessel (negative list).

Although these measures are new they will control a significant amount of the illegal trade coming from these vessels. The United States needs to ensure it implements these measures so as to not disadvantage U.S. commercial fishermen. As markets close to IUU product it will flow some place else with significant market disruption. The United States needs to prepare to guard against these imports by establishing protocols with the Customs Service before major foreign markets are closed.

Report cite to a new IUU fleet – some 100 longline vessels targeting sharks in the Caribbean. These are new vessels, all built small enough to avoid the Food and Agriculture Organization (FAO) guidance on IUU vessels, which only applies to vessels over 24 meters. The new fleet can be describes as IUUU, with the last U for undersized. One can only imagine the impact on white marlin from 100 vessels purse seining for sharks. Only the comprehensive approach described above will get at this problem.

Solutions

White marlin presents the biggest highly migratory species (HMS) conservation problem in the United States. What can we do? I have at various times described for this Committee approaches which could lead to the recovery of this stock. First and foremost, this is an ICCAT problem. It can only be solved internationally. In 1988, NMFS made marlin a gamefish. It prohibited its sale and import, and landings by recreational fishermen were drastically reduced. Still, the stock declined to the point it was considered listable under the Endangered Species Act. ICCAT stepped in and made marlin a live release fishery until 2005, when the stock will be reevaluated. No one thinks these measures are adequate to recover the stock. So how do we recover the stock?

First, do not list them under the ESA. NMFS was right when it concluded that listing was not the right way to achieve recovery. The proper venue is ICCAT, which is best persuaded by good science. Senator Kay Bailey Hutchison has requested \$2.5 million in Fiscal Year 2004 funds to do research, but more is needed. The United States should embark on three tracks immediately. First, gather the basic scientific data so that we can agree on the status of the stock. Second, initiate gear research similar to that done for the bycatch of turtles. Third, determine if there are any time and area closures where bycatch of white marlin can be reduced. Once we have the science we can establish measures to rebuild the stock, but without the science improvement will take an act of God.

Thank you for allowing me to testify here today. I look forward to your questions and comments.

[1] There may be significant environmental problems with tuna farming which ICCAT does not have the authority to address.